IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 6346 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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BHAVNAGAR MUNICIPAL CORPRATIONTHROUGH ITS COMMISSIONER - Appellant(s)
Versus
CHAUDHARI JESANGBHAI AVCHALBHA & 3 - Defendant(s)

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Appearance :
MR JR NANAVATI for Appellant(s) : 1,
MR TULSHI R SAVANI for Defendant(s) : 1 - 2.
MR MP PRAJAPATI for Defendant(s) : 1.2.1,1.2.2
NOTICE UNSERVED for Defendant(s) : 3,
SINGHI & CO for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/09/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal(Main), Bhavnagar passed in M.A.C.P. No.238 of 1989 dated 6th July, 1995 whereby the Tribunal partly allowed the said petition.

2.0 The brief facts of the case are that on the day of incident when present opponent No.2

along with her daughter Mital were proceeding on a scooter driven by her husband i.e. present opponent No.1, the said scooter was dashed by a vehicle driven by present opponent No.3. On account of the said accident, daughter of opponent Nos. 1 and 2 received serious bodily injuries and expired. Therefore, they being heirs and legal representatives of the deceased filed a petition claiming an amount of Rs.70,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard. It was the case of opponent Nos.1 and 2 before the Tribunal that on account of rash and negligent driving on the part of opponent No.3 accident in question took place. The appellant and opponent No.4 have tried to controvert the story put forward by the opponent Nos.1 and 2. They have stated that the accident in question took place on account of sole

negligence on the part of opponent No.1. However, the Tribunal did not believe the story put forward by them. On perusal of documents placed on record it transpires that place of incident is densely populated and the width of the road at that place is about 30' feet. Hence, it was incumbent on the opponent No.3 to drive the vehicle in question carefully so as not to endanger human life on the road. It may be noted that the opponent No.3 did not appear before the Tribunal to controvert the story put forward by the appellant, and hence, the Tribunal was justified in coming to the conclusion that the accident in question took place on account of the sole negligence on the part of the opponent No.3. The Tribunal, therefore, come to the conclusion that opponent Nos. 1 and 2 are entitled for compensation.

3.1 On perusal of impugned judgment and award it appears that while considering the aspect of compensation, the Tribunal has observed that the deceased Mital lost her life on account of

negligence on the part of opponent No.3, and hence, opponent Nos.1 and 2 are entitled for an amount of Rs.40,000/- by way of compensation. Here, it may be noted that while awarding the said amount, the Tribunal has not given any reasons as to on what basis it has arrived at the said amount. Even, the opponent Nos. 1 and 2 have not produced anything on record to establish the income of the deceased-Mital. Hence, the amount of Rs.40,000/- awarded by the Tribunal without giving any justifiable reasons, requires to be reversed. Here it would be relevant to refer to Section 92-A of the Motor Vehicles Act, 1939 which reads as under,

> **"Section 92- A.: Liability to pay compensation in certain cases on the principle of no fault.-**(1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.
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> (2) The amount of compensation which

shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under sub-section(1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section(1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

3.2 In view of the fact that the deceased was a minor girl and her income has not been established, the opponent Nos.1 and 2 shall be entitled for an amount of Rs.12,500/- only, towards compensation as 'No Fault Liability'.

3.3 As regards the aspect of rate of

interest, the Tribunal has awarded interest at the rate of 15 per cent. The said rate of interest is on higher side, in view of the fact that at the relevant time, it was the practice of the Courts/Tribunals to grant interest at the rate of six per cent only. The appellant, therefore, shall be entitled for the amount of compensation with interest at the rate of six per cent only, and not at the rate of fifteen per cent.

4.0 In the result, the appeal is partly allowed. The appellant shall be entitled for an amount of Rs.12,500/- by way of compensation with interest at the rate of six per cent only, from the date of application before the Tribunal. The judgment and award of the Motor Accident Claims Tribunal(Main), Bhavnagar passed in M.A.C.P. No.238 of 1989 dated 6th July, 1995 is modified to the aforesaid extent. Rest of the judgment and award is confirmed. No order as to costs.

(K. S. Jhaveri, J.)

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